(15)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.707/2007

Appellant	Podiyami Maso, s/o Podiyami Ando, aged about 30 years, occupation Agriculture, r/o village Gumadpal, Dargapara, P.S. Darbha, Distt. Bastar (C.G)
	Versus
RESPONDENTS	State of Chhattisgarh through Police station Darbha, Distt. Bastar

Criminal Appeal No.708/2007

Appellant	Podiyami Lakho, s/o Podiyami Ando, aged about 28 years, occupation Agriculture, r/o village Gumadpal Dargapara, P.S. Darbha, Distt. Bastar (C.G)
	Versus
RESPONDENTS	State of Chhattisgarh through Police station Darbha, Distt. Bastar

Criminal Appeal No.709/2007

Appellant	Podiyami Ando, s/o Podiyami Batti, , aged about 48 years, occupation Agriculture, r/o village Gumadpal Dargapara, P.S. Darbha, Distt. Bastar (C.G)
	Versus
RESPONDENTS	State of Chhattisgarh through Police station Darbha, Distt. Bastar

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Appearance:

Shri Sandeep Shrivastava, counsel for appellant Podiyami Maso in Cr.A.No.707/2007

Shri Vijay Kumar Pandey, counsel for the Appellant Podiyami Lakho in Cr.A.No.708/2007.

Shri Vinod Kumar Sharma, counsel for the appellant Podiyami Ando in Cr.A.No.709/2007.

DB: Hon'ble Shri Justice L.C. Bhadoo,
Hon'ble Shri Justice Sunil Kumar Sinha, JJ

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ORAL JUDGMENT
(11.10.2007)

The following judgment was delivered by

L.C. Bhadoo, J,

(1) Criminal Appeal No.707/2007 filed by Podiyami Maso, Cr.A.No.708/2007 filed by Podiyami Lakho and Cr.A.No.709/ 2007 filed by Podiyami Ando are being disposed of by this common judgment as all these appeals are arising out of the judgment dated 26th July, 2007 passed in Sessions Trial No.74/2007 by the Court of Sessions Judge, Bastar.

(2) These appeals are directed against the judgment of conviction and order of sentence dated 26th of July 2007 passed by the Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.74/2007 whereby the learned Sessions Judge after holding the accused appellants guilty of the offence punishable u/s 302 of I.P.C., for committing the murder of Bisu, sentenced each of the accused appellants to undergo imprisonment for life and to pay a fine of Rs.500/- each, in default of payment of fine, to further undergo R.I. for 5 months.

(3) The case of the prosecution, in brief, is that on 27.4.2007 at about 10.35 p.m., Lakhmo (P.W.1) lodged the report in Police station Darbha to the effect that Maso, Lakho and Ando, who are the residents of village Gumadpal have committed the murder of his father Bisu by attacking him with stone and a wooden handle of the Plough saying that he is practicing witchcraft. The incident has been witnessed by Budri (P.W.2), Kade (P.W.3), Dundi (P.W.6) and Lakhmi. Receiving this report, the Station House Officer, Police Station namely Ramdev Sethiya (P.W.9) registered the merg intimation (Ex.P.9) as also First Information Report (Ex.P.8) and left for the place of occurrence. After giving notice (Ex.P.10) to the Panchas, he prepared inquest Ex.P.11 on the body of Bisu. He prepared the site plan Ex.P.12. While in police custody, Maso gave memorandum Ex.P.14 regarding place where the stone and the wooden handle were lying, accused Lakho gave memorandum Ex.P.15 regarding stone and wooden handle, accused Ando gave memorandum Ex.P.16 and in pursuance of that one stone stained

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with blood was seized under Ex.P.17 on being produced by Maso. Another blood stained stone was seized under Ex.P.18 on being produced by Lakho and a wooden handle of plough under Ex.P.19 was seized on being produced by Ando. The blood stained and plain soil was taken into possession under Ex.P.20. The clothes of the deceased were seized under Ex.P.21. The body of the deceased was sent for postmortem examination to the Community Health Center, Daroha, where Dr.Y. Markam conducted the postmortem and opined that cause of death was shock due to head injury, (intra cranial hemorrhage) with fracture of ribs, the death was homicidal in nature and his report is Ex.P.1. The stones and the wooden handle were sent for examination by the Doctor under Ex.P.2, 3 & 4. The site plan Ex.P-5 was prepared by Halka Patwari.

(4) After completion of the investigation, the charge sheet was filed in the Court of J.M.F.C. Jagdalpur, who in turn committed the case to the Sessions Judge, Jagdalpur, where the trial was conducted. The prosecution in order to establish the charge against the accused persons has examined 9 witnesses. The statements of the accused persons were recorded u/s 313 I.P.C. in which they denied the material appearing against them and stated that they are innocent and they have been falsely implicated in the crime.

(5) The learned Sessions judge, after hearing counsel for the respective parties, convicted and sentenced the accused appellants as aforementioned.

(6) We have heard learned counsel for the appellants namely Shri Sandeep Shrivastava, Shri Vijay Kumar Pandey & Shri Vinod Kumar. They have not disputed the homicidal death of Bisu. More over, P.W.7 Dr.Y.Markam has stated that on 27.4.2007 he conducted the postmortem on the body of Bisu and noticed the following injuries:

(i) an abrasion with contusion on head, above left ear lobe, in size of 7cm x 2cm;

(ii) one contusion on the right side of the chest in size of 4cm x 12 cm;

(iii) an incised wound near the left eye outside in size of 2cm x 2cm x 2cm.

On the dissection of the body, it was found that the skull was crushed, maxilla, mandible, frontal and parietal bones were totally fractured. Clotted blood was present in the brain. Left side ribs 1 to 5 were fractured. All the injuries were ante-mortem in nature and caused by hard and blunt object. The injuries were sufficient in the ordinary course of nature to cause death, the cause of death was shock as a result of the head injuries and brain hemorrhage and the death was homicidal in nature.

(7) The above medical evidence is corroborated by the ocular evidence of P.W.1 Lakhmo, P.W.2 Budri Bai, P.W.3 Kade, P.W.5 Maso, P.W.6 Dundi who have stated that the accused Ando attacked the deceased with the wooden handle of the plough whereas the accused Maso & Lakho attacked with stones, therefore, in view of the above ocular and medical evidence it is established that the death of Bisu was homicidal in nature.

(8) As far as the involvement of the accused persons in the crime in question is concerned, Mr. Shrivastava argued that the witnesses have stated that the incident took place in the court-yard whereas the Investigating Officer has stated that the place of incident was on the street, therefore, in view of these contradictions, the evidence of prosecution witnesses cannot be believed. He further submitted that the witnesses have stated that at the time of incident, they were sitting in side the house; therefore, it was not be possible for them to witness the incident. In order to appreciate the arguments advanced by Mr. Shrivastava, Mr. Sharma and Mr.Pandey, we have perused the evidence. P.W.1 Lakhmo has stated that on the fateful day, the accused persons present in the court attacked Bisu with stone and wood. Lakho and Maso attacked with stones whereas Ando attacked with wood on the backside of the head as also on parietal region. At that time, he was in the house and when he rushed towards his father, the accused persons said that they will beat him also. They attacked his father in the courtyard and his father died spontaneously. Thereafter, the accused ran away. At that time,

her uncle Chappe also saw the incident. Similar is the evidence of P.W.2 Budri Bai. She has also stated that accused Ando attacked Bisu with wooden handle whereas the accused Maso & Lakho attacked with the stones and the incident took place in the court yard. P.W.3 Kade has also corroborated the above evidence. P.W.5 Maso and P.W.6 Dundi have further corroborated the above evidence and stated that the accused persons have attacked the deceased with wooden handle and stones.

(9) We have perused the site plan (Ex.P.12) prepared by the Investigating Officer. A perusal of the said site plan shows that the body of deceased has been shown at portion no.2 which is lying on the side of the road and in front of the house of Maso and near the house of Chappe. It is stated that on that day, some festival was being celebrated in the village where all these persons have gathered and in their presence only the accused persons have attacked. There is nothing on record to show that the courtyard of the house was demarcated from the house upto the road. The space is open therefore, the argument of the learned counsel for the appellants regarding variance in respect of the place of occurrence as per the evidence of eye witnesses and the investigating officer has no force. After perusal of the site plan, we are of the considered opinion that there is no variance regarding the place of occurrence because in front of the house, there is an open place and that abuts to the street shown in the map.

(10) As far as the second argument that the witnesses were sitting in side the house, therefore, there was no opportunity for them to witness the crime is concerned, a perusal of the map shows that the house of Maso is opening towards the place of occurrence and Chappe's house is also adjoining. The time of the incident was in the evening at 5 p.m. during the month of April. There was lot of light and immediately when the accused persons started attacking, the witnesses came out of the house and saw them attacking the deceased, therefore, it cannot be said that they were not able to witness the incident. Therefore, evidence of P.W.1 Lakhmo, P.W.2 Budri Bai, P.W.3 Kade, P.W.5 Maso and P.W.6 Dundi is clear, consistent and impeccable in respect of the attack

made by the accused persons with wooden handle and stone and to this extent, we do not find any illegality or infirmity in the finding of the trial Court.

(11) Learned counsel for the appellants further argued that the quarrel started on a petty matter and there was no intention of the accused persons to cause the death of deceased. It is true that there is no clear, cogent evidence available on record regarding the intention of the accused, but where no direct evidence is available regarding intention of the accused then the intention can be ascertained from the evidence available on record regarding the weapon of offence used, the place of the body chosen where the attack was made, the nature of weapon as also the force with which the assault was made and the nature of injuries inflicted. P.W.7 Dr.Y.Markam has stated that there were injuries on the chest, head and the whole head was crushed, maxilla, mandible frontal and parietal bones were smashed completely, left side ribs 1 to 5 were fractured and clotted blood was present, therefore, the nature of injuries itself show that the accused persons attacked and gave beatings mercilessly. His whole skull bone and facial bones were smashed. Even left side 5 ribs were also fractured. A perusal of Ex.P.2, P.3 & P.4 whereby the stones and the wooden handle were sent for examination by the Doctor shows that one stone was weighing 11 Kgs., the other stone was weighing 7 Kgs. and wooden handle was weighing 5 Kgs. It has come on record that when Bisu fell down, even thereafter they attacked with stones and wooden handle. Looking to the weight of the stones and the handle, it shows that when the deceased was attacked by these weapons, his whole skull bone and facial bones were smashed, even the left side ribs 1 to 5 were fractured and as a result of which, he died spontaneously. Therefore, the nature of the weapons, the place of the body chosen where the attack was made as also the nature of the injuries and the manner in which the attack was made establish the intention of the accused persons. It is because of the serious injuries caused by the accused persons, Bisu died spontaneously and the Doctor has also stated that the injuries were sufficient in the ordinary course of nature to cause

cause death, therefore, the intention of the accused persons was writ large to commit the murder of Bisu.

(12) In the result, we do not find any substance and merit in these appeals. They are liable to be dismissed and are hereby dismissed.

(14) Copy of the judgment be supplied to the accused persons, free of cost, as per the practice.

Sd/-
Sunil Kumar Sinha
Judge

Sd/-
L.C. Bhadoo
Judge